UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

UPMC and its Subsidiary, UPMC Presbyterian Shadyside, Single Employer, d/b/a UPMC Presbyterian Hospital and d/b/a UPMC Shadyside Hospital and SEIU Healthcare Pennsylvania, CTW, CLC	Cases 06-CA-102465, 06-CA-102494, 06-CA-102516, 06-CA-102518, 06-CA-102525, 06-CA-102534, 06-CA-102540, 06-CA-102542, 06-CA-102544, 06-CA-102555, 06-CA-102559, 06-CA-102566, 06-CA-104090, 06-CA-104104, 06-CA-106636, 06-CA-107127, 06-CA-107431, 06-CA-107532, 06-CA-108547, 06-CA-111578, 06-CA-115826

CHARGING PARTY'S OPPOSITION TO RESPONDENT'S MOTION FOR FULL-BOARD RECONSIDERATION

Charging Party SEIU Healthcare Pennsylvania, CTW, CLC ("Union") files this Opposition to the Motion for Full-Board Reconsideration filed by Respondent UPMC Presbyterian Shadyside on September 24, 2018.

I. Charging Party Joins with the Arguments Made by the Counsel for the General Counsel Opposing Reconsideration of the August 27, 2018 Decision

The Board's well-reasoned and well-supported decision in *UPMC*, 366 NLRB No. 185 (August 27, 2018) ("Decision") was based on an extensive record, with a trial that continued over a six-week period from February to April 2014, and a 120-page ALJD consisting of detailed findings and recommendations. There are no extraordinary circumstances that warrant its reconsideration. Charging Party joins in and incorporates by reference the arguments made by Counsel for the General Counsel in their Response in Opposition to Respondent's Motion for Full-Board Reconsideration. The Union makes the following additional arguments.

II. Respondent's Motion for Reconsideration Should Be Denied Because It Is in Violation of Board Rule 102.48(c).

Board Rule 102.48(c) requires that any motion for reconsideration must be based on "extraordinary circumstances," and "must state with particularity the material error claimed." As explained by the Board in *UFCW Local 1996*, 338 NLRB 1074, n.1 (2003), the Board's Rule is modeled on the dissenting opinion in *Laborers Local 840 (C.A. Blinne Construction Co.),* 135 NLRB 1153, 1168 fn. 31 (1962) which explains:

> We believe it is unsound policy for the Board to grant reconsideration in the absence of exceptional circumstances. Such circumstances might include a decision by the Supreme Court with respect to the interpretation of an applicable section of the Act, or where an aggrieved party presents newly discovered evidence under circumstances where the failure to discover the evidence was not due to lack of diligence and where the timely receipt of such evidence probably would have warranted a different result, or where it is shown that the decision is predicated on facts which were misrepresented or fraudulently proffered.

135 NLRB at 1168 fn. 31.

Here, no such "exceptional circumstances" have been cited by Respondent, and consequently, there is no simply basis to grant reconsideration under the Board's rule. Disagreement with the Board's instant or prior decisions does not amount to "extraordinary circumstances." *See, e.g., Am. Baptist Homes of the W. d/b/a Piedmont Gardens.,* 364 NLRB No. 95 (2016)*; Planned Building Services,* 347 NLRB 670 (2006). Likewise, a change in the composition of the Board since the decision is not a viable basis for a motion for reconsideration. *In Re United Food & Commercial Workers*, Local No. 1996, 338 NLRB 1074 (2003).

In the instant case, Respondent UPMC Presbyterian Shadyside cites as a "material error," its disagreement with three aspects of the Board's Decision, all of which were previously briefed in Respondent's Exceptions and rejected by the Board. As the Board previously held, in a prior case involving the same Respondent, "merely asking us to revisit the factual and legal bases for

[our] findings" … does "not constitute grounds for reconsideration." *UPMC I*, Case No. 06-CA-081896 (December 5, 2016) (denying Respondent's UPMC's Motion for reconsideration of the decision in *UPMC*, 362 NLRB No. 191 (2015).

III. Reconsideration of the Board's Remedial Order Is Not Warranted

The Union agrees with and adopts Counsel for the General Counsel's well-stated arguments refuting each of the three alleged "material errors" but add the following to the discussion of the claimed error concerning the Board's granting of the Union's and General Counsel's Limited Exceptions to the ALJD seeking an extension of the remedial posting period to 120 days. (Resp. Mot. at pp. 4-11).

The Board's expansion of the posting period is consistent with its broad discretion to exercise its remedial authority under Section 10(c) of the Act and with Board precedent. *HTH Corp. d/b/a Pacific Beach Hotel*, 361 NLRB 709 (2014); *Ozburn-Hessey Logistics, LLC*, 366 NLRB No. 177 (2018). In light of Respondent's "egregious and widespread misconduct so as to demonstrate a general disregard for employees' statutory rights,"[1] this remedy was neither "inappropriately punitive," nor did the Board "fail to articulate why such extraordinary relief is required to cure the alleged unfair labor practices at issue in this case," as Respondent now claims. (Resp. Mot. at 4). In fact, the Board articulated an exceptionally detailed basis for the expanded remedy, and properly concluded that:

> The extended notice-posting period is warranted based on the number and serious nature of the Respondent's violations which permeated the Union's campaign to organize a unit of 3500 Shadyside employees. These wide-ranging violations included restrictions on employee support for the Union, the unlawful formation and domination of an employee organization, threats of discipline, and the unlawful discipline and discharge of multiple employees for union activities and because they had sought access to the Board. In addition, several of these violations occurred during the 60-day notice posting period for allegations of prior

[1] 366 NLRB No. 185 at p. 70.

> Respondent unlawful conduct that had been informally settled. This occurrence of violations during that posting period demonstrates the inadequacy of the standard notice-posting period as a deterrent of future unlawful conduct and an assurance to employees that their Section 7 rights would be protected. Accordingly, we find that a 120-day posting period is warranted here.

366 NLRB No. 185, slip op. at 7-8.

Respondent also argues that the Board materially erred in permitting an agent of the Union to simply be present at the reading of the remedial Notice, erroneously contending that the Union representatives were somehow granted "access rights" to the hospital premises. This argument grossly mischaracterizes the Board's Decision; in fact, the Board *denied* the Union's Limited Exceptions seeking access rights as an additional remedy for the "egregious and widespread misconduct" here.

Finally, the Board's Decision did not arise in a vacuum; it follows from a lengthy history of Respondent's prior unfair labor practices that began in 2012, when the Union began its organizing campaign. In the years since 2012, Respondent has been a recidivist labor law violator. See *UPMC,* Case Nos. 06-CA-081896 et al. ("*UPMC I*") and the Board's decision, *UPMC,* 362 NLRB No. 191 (2015); *see also*, Case No.06-CA-119480 ("*UPMC III*"); and 06-CA-171117 *et al,* and the Board's Decision, 366 NLRB No. 142 (2018) ("*UPMC IV"*). In light of such "egregious and widespread misconduct," the Board's Decision concerning the appropriate remedies did not amount to a "material error," nor is reconsideration warranted.

CONCLUSION

Based on the foregoing arguments, and the arguments and authorities of Counsel for the General Counsel, Respondent's Motion for Full-Board Reconsideration should be denied.

Dated: October 26, 2018

Respectfully submitted,

/s/ Betty Grdina

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Charging Party's Opposition to Respondent's Motion for Full-Board Reconsideration in the above captioned case was e-filed with the NLRB and a copy was served has been served by email on the following persons on this 26th day of October 2018:

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